

[Submitted by:]

Timothy J. Preso  
Joshua R. Purtle  
Earthjustice  
313 East Main Street  
Bozeman, MT 59715  
(406) 586-9699 | Phone  
(406) 586-9695 | Fax  
[tpreso@earthjustice.org](mailto:tpreso@earthjustice.org)  
[jpurtle@earthjustice.org](mailto:jpurtle@earthjustice.org)

Beth Baldwin  
Ziontz Chestnut  
2101 Fourth Avenue, Suite 1230  
Seattle, WA 98121  
(206) 448-1230 | Phone  
(206) 448-0962 | Fax  
[bbaldwin@ziontzchestnut.com](mailto:bbaldwin@ziontzchestnut.com)

*Counsel for Plaintiff Northern Cheyenne Tribe*

*Counsel for Plaintiffs Sierra Club, National Parks Conservation Association, and Center for Biological Diversity, and Local Counsel for Plaintiff Northern Cheyenne Tribe*

*(additional counsel listed on signature page)*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

## CROW INDIAN TRIBE, et al.,

—

) Case No. CV 17-89-M-DLC

)

) (consolidated with Case Nos.

CV 17-117-M-DLC,

) CV 17-118-M-DLC,

CV 17-119-M-DLC, and  
CV 17-123-M-DLC)

CV 17-125-M-DEC,

2

## ORGANIZATIONAL PLAINTIFFS' BRIEF

## **SUPPORT OF JOINT M**

) FOR 14-DAY EXTENSION OF

## TEMPORARY RESTRAINING

) ORDER [EXPEDITED RULING]

) REQUESTED]

)

UNITED STATES OF AMERICA,  
et al.,

### Federal Defendants,

and

STATE OF WYOMING, et al.

## Defendant-Intervenors.

Plaintiffs in Case Nos. 17-89 (Crow Indian Tribe, et al.), 17-117 (Humane Society of the United States, et al.), 17-118 (WildEarth Guardians), 17-119 (Northern Cheyenne Tribe, et al.), and 17-123 (Alliance for the Wild Rockies, et al.) (collectively, “Organizational Plaintiffs”) hereby request that this Court extend its August 30, 2018 temporary restraining order (“TRO”) in these consolidated cases for an additional 14 days. Organizational Plaintiffs also request expedited treatment of this motion to ensure that the requested extension occurs no later than expiration of the existing TRO to prevent grizzly bear hunting activities that this Court has already found present a threat of irreparable harm to grizzly bears and to Organizational Plaintiffs. Specifically, Organizational Plaintiffs request a ruling by 5:05 p.m. on Thursday, September 13, 2018, at which time the existing TRO would expire if not extended.

This motion should be granted for the following reasons:

1. Following the summary judgment hearing held by this Court on August 30, 2018, Organizational Plaintiffs moved for a temporary restraining order and preliminary injunction to restrain all Defendants and Defendant-Intervenors from authorizing or implementing grizzly bear hunting, which was scheduled to commence on September 1, 2018. See ECF No. 252.
2. This Court granted that motion in part at 5:05 p.m. that same day. See ECF No. 254. The Court held that Organizational Plaintiffs had established likely

irreparable harm from the planned grizzly bear hunting, that Organizational Plaintiffs had raised serious questions going to the merits, and that the balance of equities and public interest favor issuance of injunctive relief under the Endangered Species Act. See id. at 2-4. Accordingly, the Court granted the Organizational Plaintiffs' motion in part by issuing a TRO restraining and enjoining Defendants and Defendant-Intervenors from "authorizing and/or implementing grizzly bear hunting." Id. at 4. The Court provided that this TRO would remain effective for 14 days. See id. The Court withheld ruling on Organizational Plaintiffs' request for a preliminary injunction "or any other more long-term relief." Id. at 4-5.

3. Federal Rule of Civil Procedure 65(b)(2) provides that a TRO will expire "at the time after entry ... that the court sets, unless before that time the court, for good cause, extends it for a like period." Fed. R. Civ. P. 65(b)(2). "The reasons for an extension must be entered in the record." Id. In assessing good cause for extension, "a showing that the grounds for originally granting the temporary restraining order continue to exist should be sufficient." Charles A. Wright, et al., Federal Practice & Procedure § 2953 (2018); see United States v. United Mine Workers of Am., 330 U.S. 258, 301 (1947) (affirming extension of TRO where argument on contempt proceeding that gave rise to TRO remained "in progress").

4. Here, the Court's TRO will expire at 5:05 p.m. on September 13, 2018 unless extended. See ECF No. 254 at 4-5. Expiration of the TRO would allow Defendants and Defendant-Intervenors to proceed with grizzly bear hunting that this Court has concluded threatens the grizzly bear and Organizational Plaintiffs with irreparable harm. See id. at 3. Expiration of the TRO would allow such irreparable harm to occur before this Court can issue its summary judgment ruling on the merits of Organizational Plaintiffs' claims. Indeed, the threat of irreparable harm is even greater at this juncture because, absent a TRO, Wyoming's hunting regulation would authorize grizzly bear hunting to commence inside the Yellowstone grizzly bear demographic monitoring area as of September 15. See Wyo. Admin. Code, Game & Fish Comm'n, Hunting, Ch. 68, § 6. Further, as this Court has concluded, Organizational Plaintiffs have presented, at a minimum, serious questions going to the merits, and all other requirements for injunctive relief are satisfied. See ECF No. 254 at 3-4. In sum, all grounds for original issuance of the Court's TRO continue to exist and therefore good cause exists for its extension.

Accordingly, for the foregoing reasons, Organizational Plaintiffs respectfully request that this Court extend its August 30, 2018 TRO for an additional period of 14 days.

Respectfully submitted this 12th day of September, 2018.

/s/ Timothy J. Preso

Timothy J. Preso  
Joshua R. Purtle  
Earthjustice  
313 East Main Street  
Bozeman, MT 59715  
(406) 586-9699 | Phone  
(406) 586-9695 | Fax  
tpreso@earthjustice.org  
jpurtle@earthjustice.org

*Counsel for Plaintiffs Sierra Club, Center  
for Biological Diversity, and National Parks  
Conservation Association and Local  
Counsel for Plaintiff Northern Cheyenne  
Tribe*

Beth Baldwin  
Ziontz Chestnut  
2101 Fourth Avenue, Suite 1230  
Seattle, WA 98121  
(206) 448-1230 | Phone  
(206) 448-0962 | Fax  
bbaldwin@ziontzchestnut.com

*Counsel for Plaintiff Northern Cheyenne  
Tribe*

/s/ Jeffrey S. Rasmussen  
Jeffrey S. Rasmussen  
Peter J. Breuer  
Katie D. Frayler  
Michael W. Holditch  
1900 Plaza Drive  
Louisville, CO 80027  
Telephone: (303) 673-9600  
Facsimile: (303) 673-9155/9839  
Email: pbreuer@ndnlaw.com  
Email: jrasmussen@ndnlaw.com  
Email: kfrayler@ndnlaw.com  
Email: mholditch@ndnlaw.com

*Counsel for Plaintiffs Crow Indian Tribe, Crow Creek Sioux Tribe, Standing Rock Sioux Tribe, Piikani Nation, the Crazy Dog Society, Hopi Nation Bear Clan, Northern Arapaho Elders Society, David Bearshield, Kenny Bowekaty, Llevando Fisher, Elise Ground, Arvol Looking Horse, Travis Plaited Hair, Jimmy St. Goddard, Pete Standing Alone, and Nolan Yellow Kidney*

/s/ Matthew K. Bishop  
Matthew K. Bishop  
Western Environmental Law Center  
103 Reeder's Alley  
Helena, MT 59601  
(406) 324-8011 (tel.)  
(406) 443-6305 (fax)  
bishop@westernlaw.org

*Counsel for Plaintiff WildEarth Guardians*

/s/ Nicholas M. Arrivo

Nicholas M. Arrivo

The Humane Society of the United States

1255 23rd St. NW

Washington, DC 20037

(202) 676-2339

narrivo@humanesociety.org

Kristine M. Akland

Akland Law Firm, PLLC

317 E. Spruce St.

P.O. Box 7274

Missoula, MT 59807

(406) 544-9863

aklandlawfirm@gmail.com

*Counsel for Plaintiffs The Humane Society  
of the United States and The Fund for  
Animals*

/s/ Timothy M. Bechtold  
Bechtold Law Firm, PLLC  
PO Box 7051  
Missoula, MT 59807  
(406) 721-1435  
tim@bechtoldlaw.net

Rebecca K. Smith  
Public Interest Defense Center, P.C.  
P.O. Box 7584  
Missoula, MT 59807  
(406) 531-8133  
publicdefense@gmail.com

David A. Bell  
1917 S. Higgins Ave  
Missoula, MT 59801  
(406) 531-0403  
BellLawMT@gmail.com

*Counsel for Plaintiffs Alliance for the Wild  
Rockies, Native Ecosystems Council, and  
Western Watersheds Project*

**CERTIFICATE OF COMPLIANCE**

Pursuant to Local Rule 7.1(d)(2), I hereby certify that the foregoing brief contains 668 words, as determined by the word count function of Microsoft Word.

/s/ Timothy J. Preso  
Timothy J. Preso

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was today served via the Court's CM/ECF system on all counsel of record.

/s/ Timothy J. Preso  
Timothy J. Preso